

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0413P

Use Tax

For Calendar Years 1999 and 2000

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ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer was audited for calendar years 1999 and 2000. Upon audit it was discovered that the taxpayer failed to remit use tax and had no use tax accrual system in place.

Taxpayer requests abatement of the penalty because a shareholder purchased multiple capital assets on his personal credit card. His monthly credit card bills submitted for reimbursement did not illustrate sales tax paid, but only the total amount paid. Taxpayer states it was unable to obtain the original sales invoices in order to demonstrate that sales tax was paid at the time of sale.

I. Tax Administration – Penalty

DISCUSSION

The audit indicates the taxpayer failed to remit use tax on clearly taxable items such as the rental of a video game machine, magazine subscriptions, and capital assets. Taxpayer had no use tax accrual system in place.

Taxpayer protests the penalty assessed and merely states that it was unable to prove that sales tax was paid.

45 IAC 15-11-2(b) states, “Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to have a use tax accrual system in place and has not provided reasonable cause to allow a penalty waiver.

FINDING

Taxpayer’s protest is denied.